

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Calling Party Pays Service Offering in the) WT Docket No. 97-207
Commercial Mobile Radio Services)

REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.

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TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. INTRODUCTION AND SUMMARY | 1 |
| II. BILLING MANDATES MUST NOT ISSUE FROM THIS PROCEEDING..... | 6 |
| A. LEC Billing Is Not Necessary For CPP Offerings..... | 6 |
| B. Alternatives To LEC Billing Are Available Or Can Be Created | 11 |
| C. A Carrier’s Refusal To Bill For Others Is Not “Anticompetitive” | 17 |
| III. LECs SHOULD BE FREE OF OTHER BURDENS ASSOCIATED WITH CPP | 21 |
| IV. CONCLUSION | 23 |

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I. INTRODUCTION AND SUMMARY

The Federal Communications Commission (“FCC” or “Commission”) must keep to a minimum its regulatory intervention in the market penetration of Calling Party Pays (“CPP”). It certainly need not resolve every possible business issue that might arise, as many of these issues can be resolved through industry dialogue.¹ And, given the differing opinions on the scope of the offering itself, as well as its potential success in the United States where the Commercial Mobile Radio Services (“CMRS”) marketplace is maturing, the Commission should be wary of exerting the type of “heavy regulatory hand” that some commentators desire.

In particular, the Commission must resist the entreaties of those who would embroil the industry in years of contentious legal battles by requesting that the

¹ As a general matter, U S WEST Communications, Inc. (“U S WEST”) supports deregulatory, rather than regulatory, frameworks for product offerings. Thus, we believe Commission intervention in any aspect of the CPP offering should be narrow and targeted. Therefore, we disagree with commentators, such as AT&T, who argue that Commission intervention is required in the areas of CPP blocking and the charging of access when a CPP call is rejected before an optional CPP offering becomes feasible. AT&T at 2, 6-9. Many of these issues can be worked out in industry fora and carrier-to-carrier negotiations.

Commission mandate that non-CMRS carriers bill for the optional CPP service offering that might be offered to the public by some select segment of that community. Such would be a totally unfounded mandate given legal precedent, current market configurations, First Amendment principles and a workable economic environment.

Additionally, the Commission must not draft the resources -- human or otherwise -- of other carriers in hopes of “solving” problems currently identified with CPP as the Commission defines that offering.² Often, the kinds of problems

² Moreover, because U S WEST does not intend to offer CPP at this time, we take no express position on most of the issues associated with the Commission’s proposed notification. (We should clarify, however, that we currently bill for CPP offerings and have no current business intention to change that position.) From the perspective of “legal principles,” we believe it important to go on record as supporting the arguments of GTE and some wireless service providers that the affirmative disclosure of rate information is not essential to the establishment of a binding contract, especially where there are alternative mechanisms for getting the information. In the absence of such disclosure, the law will flesh out the contractual agreement by assuming the assessment of a reasonable rate. See GTE at 24-28, 18 (would reluctantly support disclosure of airtime charges for a limited period of time); Nextel at 9-10. And see AirTouch at 46 (only airtime price information should have to be given), 50; CTIA at 28-30 (there are a variety of mechanisms that might be utilized to form a binding contract); Omnipoint at 3-4. Moreover, barring a demonstrating of price gouging, rate disclosures are not generally necessary as a matter of consumer protection, either. See CTIA at 27-28. Finally, we share the concerns that Leap expresses that a rate announcement might, in fact, be misleading if the particular call in question is exempt from the CPP structure due to other CPP product designs (e.g., free calls for family members, etc.). Leap at 8-9.

We also generally agree with those arguments that rates associated with the provision of competitive services, including new services, should not be regulated based on some speculation of consumer harm. Rather, the Commission should take a “hands off” approach and allow the market to operate unless demonstrable and material harm arises. See AirTouch at 56-63; BellSouth at 21-22; CTIA at 31-34; GTE at 28-31; Leap at 12; Nextel at 11. Compare Bell Atlantic at 5 (market pressure will keep rates appropriate and no regulation is needed).

predictable to occur in the United States are not present in Europe due to a variety of factors ranging from *status quo* service offerings involving measured service, the dedication of numbering resources or special dialing patterns, and the basic **invisibility of the CMRS provider** in the CPP transaction and billing process.³

In the CPP offering defined by the Commission, however, the CMRS provider is clearly visible, i.e., it is in fact the service provider. Thus, as the responsible party for the service offering, it is clearly the CMRS provider, not other telecommunications carriers who have neither the customer relationship nor enjoy the revenue from the offering, that must manage to frame the offering in a fashion that allows it to be successful in the market. If CMRS providers desiring to offer CPP cannot accomplish this result, they should not offer the product.

Moreover, although some will argue that the current “imbalance” of incoming and outgoing traffic associated with CPP “is not the result of free consumer choice,”⁴ it clearly is the choice of the CMRS provider who -- as Ameritech points out -- had the responsibility and choice regarding how the service would be configured, offered

³ See PCIA at 14-15. And see DETECON White Paper (attached to PCIA filing) at 2, Finding 1, noting that in parts of Europe, when “wireless service” (not just the CPP offering) “was introduced, no additional carrier-to-customer relationship was established because the calling party maintained the relationship with the originating network operator [generally the local exchange carrier (“LEC”)]. No relationship with the CMRS provider was required.” (emphasis added), p. 12 at 2.1.2, “Even though competition has been introduced into the European market and there are many long distance companies, a few fixed line operators, and a growing number of wireless providers, the basic plan of a single fixed line operator being the primary provider for the fixed line customer . . . for all transactions initiated by the fixed line customer and on behalf of any other carriers who may be involved in the transport of a transaction initiated by the fixed line customer.” (Emphasis added.)

⁴ PCIA at 7.

and charged for.⁵ As numerous commentators point out, CMRS customers enjoy a variety of calling plans.⁶ And, as Leap points out, a flat-rated calling/payment structure would allow CMRS service to more closely replicate wireline offerings,⁷ providing the kind of “align[ment] [of] customer call payment expectations to mirror those of landline calling” that some commenting parties advocate. This belies the notion that a CPP offering is necessary to accomplish such result.⁸

In addressing and resolving the various matters raised by the Commission and commented on by filing parties, one has to seriously question whether a “paradigm shift”⁹ in the CMRS realm -- while clearly not necessary -- is even

⁵ Ameritech at 2-3. Compare NTCA at 5 (“whether or not LECs possess economies of scale is irrelevant. It is true of many other billing agents. Other parties should not be forced to bill and collect for CMRS providers who have the clear choice to collect charges for CMRS airtime from their subscribers instead of calling parties.”).

⁶ Even the PCIA DETECON White Paper acknowledges that -- without regard to CPP -- “Prepaid services will expand [the wireless] distribution network even further into less-traditional areas, increasing the ease of obtaining wireless service. This will continue to help drive demand for wireless service.” DETECON White Paper at 43. And see AirTouch at 7 n.4, noting that a recent Yankee Group Study showed “that pre-paid services are rapidly becoming more affordable. Yankee expects also pre-paid users to grow from 3.5% of all wireless subscribers in 1998 to 22% in 2003,” and noting AirTouch’s own modification of its pre-paid offerings “to make them even more affordable,” id. at 9 n.7 (referencing other innovative calling/pricing plans). See further CPUC at 8 (discussing various attractive payment plans associated with CMRS services).

⁷ See Leap at 6 (noting that its offering of a “flat rated ‘around town phone’ service is one of the most vivid examples of how wireless carriers are providing competition in local telephony” today. In Leap’s estimation, changing the “Byzantine rate structure” (at 6 n. 14) associated with much of today’s wireless services and converting the structure into a “model where, from the user’s perspective *no one* pays, much like using a landline phone for local calls.”). See also CPUC at 8.

⁸ PCIA at 10.

⁹ See BellSouth at 22-25; Joint Consumer Advocates at III.B. (no page numbers); Leap at 2 (“CPP simply is not needed to provide additional stimulus to wireless

desirable. U S WEST believes the comments demonstrate that the potential cost burden associated with bringing CPP offerings to market far outweighs the public benefit, at least at this time.¹⁰

For these reasons, the Commission must make clear that there will be no “shift in the responsibility for call payment”¹¹ from CMRS carriers offering CPP to other carriers. In that same vein, the Commission should make clear that interconnecting carriers, such as LECs, have no obligation to educate customers about CPP offerings (unless they voluntarily decide to do so to avoid calls into their offices), to block CPP calls, or to engage in any other “product design/development” type tasks.

Finally, while U S WEST disagrees with large portions of PCIA’s and AirTouch’s advocacy in this proceeding, we do agree with them that this is not the proceeding in which to “reexamin[e] . . . wireless and landline interconnection and

usage or competition.”), 3-4; Ohio Commission at 4-5; SBC at 1-7; USTA at 7-8, 9-10. And see PCIA at 8.

¹⁰ It should be noted that those who quote from Chairman Kennard’s remarks about growing CMRS CPP services in part through extending participation to college students who might otherwise lack sufficient funds to enjoy CMRS offerings (see PCIA at 9-10 and n.13), fail to recognize the problem associated with such calling for the institutions of higher learning where those students matriculate. See Lander University, generally; Ad Hoc/ACUTA, generally. As with any other telecommunications service, a sound cost/benefit analysis requires that economic consequences associated with the offering be considered from all sides. It makes little sense to “open” the flow of a calling offering (when alternative calling plans already exist to accommodate such interest) and then have the industry incur costs to “close” the primary spigot associated with the calling transactions. This is especially true where the entity being asked to “close” the spigot is a different industry than the one turning on the faucet and collecting the revenue. See discussion at Section II.B., below.

¹¹ PCIA at 8.

access,”¹² contrary to the advocacy of Sprint.¹³ The open docket on that issue provides the more appropriate forum and framework for regulatory resolution of such matters.¹⁴

II. BILLING MANDATES MUST NOT ISSUE FROM THIS PROCEEDING

A. LEC Billing Is Not Necessary For CPP Offerings

U S WEST opposes the rhetoric of commentators such as PCIA,¹⁵ AirTouch,¹⁶ Omnipoint,¹⁷ and others¹⁸ who continue to press old, stale, rhetoric about how regulators should bless their product offerings but help them conscript the resources of third parties because -- alas -- they cannot bill for the services they think are so wonderful and from which they either currently do -- or will -- receive coveted revenues. Indeed, the only difference between the arguments being made here and those pressed by MCI in 1997 is that by the time MCI came up with its novel argument it -- along with other interexchange carriers (“IXC”) -- was already making billions of dollars, whereas here some commentators allege they cannot make

¹² PCIA at 54; AirTouch at 36-39. Compare CTIA at 9-10; GTE at 38-41.

¹³ Sprint at 12-19.

¹⁴ See In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Providers, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, 11 FCC Rcd. 5020 (1996).

¹⁵ PCIA at 33-54.

¹⁶ AirTouch at 10-36.

¹⁷ Omnipoint at 1-2, supporting PCIA filing in seeking a “redefinition” of CPP that differs from that tentatively found agreeable by the Commission.

¹⁸ See Nextel at 12-13; USCC at 8-10, VoiceStream at 5-9. Compare Nevadacom, generally, who does not address the CPP billing issue but argues generally that the Commission has ample authority to affirmatively regulate LEC billing services.

a dime if the services of others are not dragooned to serve their pecuniary purposes.

The arguments pressed by those claiming the Commission should mandate third-party carriers to bill for optional CPP offerings are far from calling “for the imposition of a simple, unobtrusive rule with respect to non-common carrier billing.”¹⁹ Rather, the arguments explicitly call for the heavy hand of government to aid in the intrusion of others’ charges in (mostly) LEC bills, despite all legal and policy precedent to the contrary.

In short, the arguments are outrageous.²⁰ This is especially the case where

¹⁹ AirTouch at 22.

²⁰ AirTouch argues that the Commission should treat LEC billing for CPP similar to the way in which cable operators are required to bill for leased access service providers. AirTouch at 10, 22. But the Commission should clearly not go down such a road, given the materially different record on the availability of billing resources to CMRS providers *versus* leased access service providers and the lack of Congressional support for such a position. In the Report and Order, 8 FCC Rcd. 5631, 5944-45 ¶ 504 (1993), where the Commission addressed the matter of billing and collections services for leased access providers, the Commission held that “the record before [it] contain[ed] little specific data on the existence of competitive providers of billing and collection services to leased access programmers, or the likelihood that a competitive market for these services [would] develop in the future[.]” Indeed, the Commission compared the record before it regarding billing alternatives available to leased access providers to the record it had before it when it deregulated LEC billing and collection, finding the records materially different. Moreover -- and critically from the perspective of AirTouch’s use of this “model” as precedent to support its request for mandated LEC billing in a CMRS/ CPP context - - the Commission specifically grounded its mandate in a previous Congressional act. Again, in the Report and Order, the Commission stated that “pursuant to our authority under Section 612(c)(4)(A)(ii), we will require cable operators to provide billing and collection services for leased access cable programmers, unless operators can demonstrate the existence of third party billing and collection services.”

Based on the above two things are clear. First, the record in the cable operator/leased access provider proceeding was substantially and materially different from the current record which demonstrates a range of billing alternatives for CMRS providers desiring to offer optional CPP services. Second, the

commentors argue that when one bills to collect for one's own services but decides not to bill for others' services, one acts in an "anticompetitive" fashion.²¹ To be sure, most of the commenting parties do not even attempt to make out a persuasive case that a carrier billing its own services on its own behalf acts "anticompetitively" in the antitrust sense when it declines to bill for others. Not only is such case not made even in the abstract of from an intellectual perspective, no party demanding access to a LEC's bill satisfactorily addresses how such demand can be reconciled with adverse consequences to a LEC's goodwill with its customers, particularly where the billing presages considerable customer confusion and irritation and a LEC has begun to develop concerns over "sticker shock."²² Apparently, those asserting that "anticompetitive conduct" is occurring believe that merely making the allegation is sufficient.

The Commission should "correct" the misunderstanding of those who believe asserting something is the same as proving it. Such is not the case in a rulemaking

Commission based its decision to mandate billing by cable operators at least in part based on a previously-enacted statute. No such statute exists with respect to LEC billing that would indicate a Congressional intent to reverse the Commission's position on the voluntary nature of LEC billing, despite Congress' undoubted familiarity with that long-standing position.

²¹ See discussion accompanying notes 49-60.

²² See SBC at 10, and discussion of their position by Pilgrim at 31. Pilgrim makes the ridiculous statement that any such concern is mere speculation and is, in any event, irrelevant. *Id.* at 32. The relevancy of the "bottom line of the bill" cannot seriously be questioned. Compare Susan Ness statement in Truth-in-Billing proceeding about "bottom line of the bill." In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, Notice of Proposed Rulemaking, FCC 98-232, rel. Sep. 17, 1998 at Separate Statement of Commissioner Susan Ness. And, commercially reasonable strategies to alleviate that pressure are hardly anticompetitive.

proceeding any more than in a complaint proceeding. All told, a dictionary and a course in antitrust jurisprudence is more essential and critical to the success of many commentors' CPP commercial operations than is LEC billing.

Moreover, commentors never make the case that LEC billing and collections constitute unbundled network elements ("UNE") that incumbent LECs are, by law, required to provide in appropriate circumstances.²³ Nor, as pointed out by other commentors, could such a case be made.²⁴

And, given that non-CMRS carriers generally offer up Billing Name and Address ("BNA")²⁵ (even though it, also, would not constitute a UNE under the 1996 Act),²⁶ clearly indicates that any basic "input" to the billing process would be made available for a fee to those CMRS providers desiring to offer CPP.²⁷ Having the raw material required to accomplish any necessary billing and collections, those who

²³ See, e.g., CTIA at 38-39; PCIA at 44-51.

²⁴ The Commission's recent UNE Remand Order does not include such as a UNE. And see Bell Atlantic at 8-9; GTE at 36-37; SBC at 9-10; USTA at 3-6 (all arguing that such does not meet the statutory definition of a UNE).

²⁵ See CBT at 6; GTE at 31-32, 35; U S WEST at 5, 19-22. It is not clear what Pilgrim means when it argues for "real time" billing information. Pilgrim at 3. For such information, it might have to utilize some type of database such as the Line Information Database ("LIDB"). See discussion below associated with notes 64-65.

²⁶ See GTE 36-38. Compare BellSouth at 3-4 (inquiry is generally irrelevant because the statutory provision does not have a sufficient reach to all affected billing entities).

²⁷ RTG makes the absurd argument that BNA should be provided to CMRS providers for free. RTG at 4. It cites no authority to support this position. And note DETECON White Paper at 3, Finding 2, observing that carriers other than incumbent LECs -- such as competitive LECs, IXC and other CMRS providers -- might not provide such information. Furthermore, it is possible that BNA offerings might need to be modified to accommodate a CPP environment. See, e.g., AirTouch at 15 and n.21.

argue that LECs should operate as their printing presses and bill collectors miss the point. The point being that neither the relevant law nor sound public policy are on their side.

The Commission must put an end to this continuous, tiresome line of “we need/want/have a right to LEC billing” advocacy by making clear that it has no intentions now -- or in the future -- of mandating any carrier to bill for the services of another carrier. Contrary federal action would be abhorrent to a competitive market and to the principles of free association. Moreover, it is a certainty that were such regulatory mandate to issue, years of long and contentious legal battles would ensue.

Such a clear declaration would light the fire under the carriers calling for such mandated billing to start looking to a type of billing aggregator and clearinghouse that indisputably will provide scale and scope for non-presubscribed billing transactions.²⁸ Similar to the arrangements involving Broadcast Music Inc. (“BMI”) and American Society of Composers, Authors and Publishers (“ASCAP”) in the area of music copyright, a clearinghouse is particularly well suited to handle transactions that might not constitute more than minimal billings but that involve

²⁸ See discussion below at text associated with notes 41-46.

AirTouch argues that a clearinghouse model does no good, since the clearinghouse would have to negotiate with the LECs for billing and collection services. AirTouch at 12. But that is not correct. Just because toll billing aggregators (and some that deal with telecommunications-related services) currently do utilize LEC billing services does not mean that such has to be the case. Moreover, AirTouch’s attached “economic analysis” spends little space, and even less analysis, on the matter of the economics of clearinghouse billing. See Declaration of Dr. Michael L. Katz and David W. Majerus at 10-11, AirTouch Comments Attachment.

many transactions and require “account management” through the collections process.

B. Alternatives To LEC Billing Are Available Or Can Be Created

Despite the law and the logic of the situation, some commentators simply continue to argue that LECs (and sometimes IXCs and unaffiliated CMRS providers)²⁹ must provide billing and collection services to this subset of CMRS provider³⁰ because such billing is “essential,”³¹ or critical,³² or “goes to the very heart”³³ of the success of optional CPP services. Sometimes the argument is stated differently, *i.e.*, that “there are no practical economic alternatives.”³⁴

Those who do make the effort to offer evidence on the matter argue that the

²⁹ PCIA at 51 (observing that “a significant number of CPP calls will be interexchange calls. For these calls, it may be more logical to have the billing performed by the IXC that carries and bills for the landline portion of the call. . . . The Commission should evaluate the extent to which the billing and collection services of other carriers, such as IXCs, competitive LECs and even other CMRS carriers, should be made available to enable the nationwide and full-fledged offering of CPP service in the United States.”). And see DETECON White Paper at 15, 2.1.4, discussing IXC billing obligations.

³⁰ It must constantly be remembered that, when discussing CPP given its “optional” offering status, the calls for regulatory intervention are being made not even with respect to the entirety of the CMRS market but some smaller subset. As Ameritech notes, “a very small segment of wireless industry [sic] has responded” to the behavior of CMRS subscribers of limiting access to themselves “not by changing [the] rate structure, but by asking the Commission for help.” Ameritech at 3.

³¹ AirTouch at 10; VoiceStream at 5.

³² Compare America One at text around n.11 (no page numbers) (arguing that without LEC billing and collections there would be “turmoil for wireless service providers” and the CPP offering would not be “viable”); CERB at 2 (“Without LEC billing and collection, CPP simply is not viable”), 6 (“Mandatory LEC Billing and Collections for CPP is Critical to Competition”).

³³ PCIA at 34.

cost of taking the basic billing information (the recording of the usage through the CMRS provider's switch) and matching it with BNA and getting it printed, put into a billing envelope, sent out, and collected would cost more than the amount to be billed.³⁵ Whereas one might assume that if it costs more to bill a product than one earns from the product offering, offering the product makes no sense, that is not the road these commentors are travelling. Rather, they want to solve this basic, inherent product design infirmity by getting others to bill for their product offering. The Commission should not aid in such irrational economic thinking or order market intervention in the form of mandatory free riding.

If it is true that a CPP service cannot be economically offered, then it should not be offered.³⁶ As Ameritech has stated, "the Commission should do nothing that would distort the marketplace by providing regulatory incentives [or mandates] for the proliferation of CPP when the marketplace, acting on its own, would be hesitant to embrace the service offering."³⁷ Indeed, this is the basic rule of markets and services.

A plumber in a remote rural area cannot assert that she has "the ultimate

³⁴ Id. at 40.

³⁵ See, e.g., id. at 37 (providing information on the bill generation and mailing costs), 39 (providing information on the customer care costs); Sprint at 7-8 and n.21.

³⁶ PCIA at 37 (stating that it "is obviously an uneconomic proposition" for a CMRS provider to bill for CPP services on its own behalf); AirTouch at 12 (absent mandated LEC billing services, it would be uneconomic to offer CPP). Moreover, various commentors argue that LEC billing at current rates would not allow for an economically-viable CPP offering. See, e.g., AirTouch at 36-38; Sprint at 9. And see CERB at 9-10. And Sprint argues that the prices for clearinghouse billing are even higher. Sprint at 8.

and primary responsibility to design [her product] in a manner that customers . . . find convenient to use, a fair value for their money, and simple to understand,”³⁸ and then demand that her sole neighborhood hardware store bill for her because it would cost her more to set up a billing process than she expects to bill out and because the goodwill relationship between the hardware store and its customers will probably ensure the plumber a better collectible rate. Just as the plumber could not commandeer the sales force of the hardware store to hawk her services,³⁹ she cannot demand they bill for her.⁴⁰ Bottom line: if she cannot cover the cost of billing her services, she should stay out of the market.

The fact that a CMRS provider desiring to offer CPP would find it expensive to bill is part of the equation associated with the decision to offer the product. The challenge might be to choose between the lesser of two evils: prohibitively expensive direct, self-sourced billing or utilizing the services of a billing aggregator/clearinghouse willing to provide the service. This billing service provider might look similar to that used by copyright owners who seek to secure

³⁷ Ameritech at 2.

³⁸ AirTouch at 9, outlining the scope of a CMRS provider’s “responsibility” for a CPP service, but eschewing any responsibility for billing.

³⁹ Olympia Equipment Leasing Co. v. Western Union, 797 F.2d 370, 377-78 (7th Cir. 1986) cert. denied, 480 U.S. 954 (1987) (Opinion by Circuit Judge Posner) (“Olympia Equipment”) (“Olympia had no right under antitrust law to take a free ride on its competitors’ sales force. You cannot conscript your competitor’s salesmen to sell your product even if the competitor has [a] monopoly.”), 379 (“Refusing to act as your competitor’s sales agent is not an unnatural practice engaged in only by firms bent on monopolization.”).

compensation from many parties often for small amounts of use -- something like the BMI/ASCAP arrangements.

Certainly the use of a Billing Aggregator or Billing Clearinghouse would alleviate one of the primary “problems” that comments such as PCIA portend foretell the doom for CPP: the mailing of a number of different bills for a small amount of charges on each bill.⁴¹ Under such a model, at least with respect to those CMRS providers offering CPP who participate, economies of scale could be realized both with respect to bill generation and collections.⁴²

⁴⁰ Compare Catlin v. Washington Energy Co., 791 F.2d 1343 (9th Cir. 1986) (holding that there was no obligation of a public utility to give access to others to mailings to the utility’s customers).

⁴¹ PCIA at 38 (“A CPP customer who makes several calls to wireless customers served by different carriers would receive a number of small bills from carriers she may not even recognize[,] perhaps up to 10 or 12, which would be “irritat[ing] [to] many consumers”. And see DETECON White Paper at 8. But see DETECON White Paper at 4, Finding 3, noting that the use of a 3rd Party clearinghouse “would . . . minimize the number of bills generated for the calling party as calls could be ‘grouped’ together for all CMRS providers.”

⁴² PCIA at 40. There PCIA acknowledges that “the use of national clearinghouses to perform much of the pre-bill fulfillment function could yield certain efficiencies of scale,” but complains that the price differences for bill fulfillment (which is described in the DETECON White Paper as “Printing and Mailing”, p. 28 3.3.1.5) between the clearinghouse and the LEC are more than it wishes to pay. And see DETECON White Paper at p. 3, Finding 2, noting that the lack of LEC billing “can be ameliorated to some extent through a 3rd Party arrangement where a single 3rd Party acts as a clearinghouse for all CMRS calls.”, at p. 4, Finding 3, noting that “the use of a single 3rd Party by all CMRS providers could offer some billing cost scale benefits and improve bad debt risk for the CMRS provider.”; at p. 34, 3.3.3.2 noting that a 3rd Party billing alternative allows “[s]cale [to be] improved over [each CMRS provider billing on its own] because the Service Provider can put multiple CMRS providers’ charges on one bill (appropriately identifying each of the carriers and their respective charges).”; Pilgrim at 10-11 (clearinghouse billing “could solve the problems associated with the CPP provider’s attempting to construct and operate its own billing system” but arguing that it would not fix the uncollectible problem). (Pilgrim cites to U S WEST as agreeing with its uncollectible advocacy.

As BellSouth notes and the filed comments make clear, one such billing aggregator has already indicated “that the underlying processing and settlement capabilities exist *today* to provide CPP clearing services to wireless carriers.”⁴³ As Illuminet has stated,

[T]he telecommunications billing, collection and customer care industry is a thriving business in its own right, growing worldwide from roughly \$10 billion in 1997 to an estimated \$14 billion by 2000, generating a compound annual growth rate of 13 percent. The third-party service provider segment of the billing, collection and customer care industry is expected to grow even faster at a compound annual growth rate of 30 percent during the same period.

Based on the experience of the interexchange B&C market, Illuminet submits that there is no rational basis to believe the CPP market will have its B&C service options limited. . . . [R]egulatory mandates for all LECs to provide CPP B&C service may actually have an unintended anti-competitive impact by curtailing market activity that could result in the emergence of other non-LEC based billing options.⁴⁴

Other billing mechanisms also exist, although each may be appropriate to only a segmented type of CPP calling.⁴⁵ And, recent press releases suggest that, in

Pilgrim at 25-26. However, the quotation it uses does not address LEC billing and collections but network “leakage” associated with the processing of CPP calls between a LEC and CMRS network. This is an apples/oranges association.) Compare NTCA at 6 (noting that “It is difficult to imagine that a rural [ILEC] with 8-10 employees, serving 2,000 subscribers has any economic advantage over the likes of companies such as AirTouch, AT&T, Omnipoint or Sprint PCS.”).

⁴³ BellSouth at 16 (emphasis in original), citing to comment of Illuminet.

⁴⁴ Illuminet at 6-7. And see USTA at 7 and n.12 (quoting from an industry report regarding the growth of third-party billing and customer care services and referencing at least seven publicly-traded companies providing billing and collections services to telecommunications service providers).

⁴⁵ U S WEST does not address in any detail the AirTouch submission (or those discussions presented by other parties), which purport to demonstrate why credit card or non-telecommunications utility billing would not be a satisfactory billing mechanism for CPP. Like AirTouch, most parties arguing that LEC billing is

addition to existing billing aggregators, others are emerging on the horizon.⁴⁶

Furthermore, the billing functionality associated with new AIN capabilities offers alternative billing arrangements for those calls often subject to “leakage.”⁴⁷

It may be that second best billing alternatives are the “best” that CPP providers get to choose from.⁴⁸ But that is hardly a legal violation. Rather, it is a market condition. Clearly, the CPP offering the Commission envisions in the United States is not one similar to that generally offered in Europe, which the

essential treat each “billing alternative” as if it were the “only” alternative across the entire service offering. Compare DETECON White Paper. Such might not be true, since carriers often utilize a variety of billing mechanisms even with respect to a single service offering.

Credit card billing is clearly an appropriate billing vehicle from some telecommunications services and is routinely used by customers (credit card billing from payphones, for example). While it may be manageable in some CMRS environments (including some CPP calling environments), it may not be a panacea for all telecomm or telecomm-type billings. Similarly, there may be circumstances where non-telecomm-utility billing makes sense. But there is almost no circumstance in which an alternative aggregator or clearinghouse billing arrangement does not make sense, especially if a large volume of telecomm and telecomm-related transactions are processed in bulk to accomplish economies of scale.

⁴⁶ For example, computer manufacturer Compaq recently announced it was forming a new division to provide services to telecommunications companies. The company said Compaq Telecommunications would bring together 2,000 Compaq employees currently working in other divisions. Half of the staff would be in the United States, and the headquarters would be near Dallas, in the so-called “telecom corridor.” The company also unveiled its new telecommunications engine -- the computer which keeps track of telephone calls and bills customers. The system can handle 15,000 transactions per second as well as up to 40,000 customer service operators. (Source: Associated Press, 8:40 a.m., 10/12).

⁴⁷ See BellSouth at 15-18; GTE at 11.

⁴⁸ DETECON White Paper at 40 (“[t]he next most economical solution is the joint use of a *3rd Party Service Provider* to perform a number of the services on behalf of all of the CMRS providers.”).

DETECON White Paper describes as involving basically a CMRS provider who is invisible to the consumer. On the contrary, in the CPP offering being proposed by the Commission, the CMRS provider is highly visible -- its identity is announced on each call, it sets the rates, it has a contractual relationship with a “customer” of its own. In such situation, the billing obligation (to collect the common carrier charges) is most certainly lodged with the CMRS provider. And that obligation cannot be fulfilled through regulatory mandates but must be accomplished through commercially negotiated relationships.

C. A Carrier’s Refusal To Bill For Others Is Not “Anticompetitive”

Finally, a word about the persistently misused word “anticompetitive.” By now it has become a certainty that those demanding LEC billing argue that they have a right to such billing because not granting them access to the LEC billing envelope is “anticompetitive.” This is hogwash.

A LEC -- like any other common carrier -- has a Title II right and obligation to bill and collect for its own common carrier services lawfully rendered. Billing for your own charges, and refusing to bill for those of others, cannot be said to be anticompetitive regardless of how many times third parties -- sometimes competitors/sometimes not -- claim that it is.⁴⁹ Such is simply not the law. Nor should it form the basis of federal regulatory policy.

Businesses -- even very large ones, even monopolies -- have “no general duty

⁴⁹ Compare PCIA at 42 (“The Commission cannot agree that the protection of an ILEC’s own competitive interests -- to the material detriment of potential competitors -- provides sufficient grounds on which to permit the ILEC to deny access to billing services.”).

to help [their] competitors,” either directly through price supports⁵⁰ or indirectly through the drafting of their human or system resources. A bill generated by a business to its own customers is not converted to some type of public access resource (i.e., “the local bill”)⁵¹ through such bill rendering activity. There is no “universal local bill.” There is a LEC bill, whose fundamental purpose and objective is the billing and collection of its own corporate charges. Allowing others access to that bill is a negotiated privilege not a legal right.

It must be remembered that billing for one’s services is clearly a speech/communicative-laden activity. It is part of the overall sales/marketing activity of businesses.⁵² While a salesperson “makes” the sale, it is sealed through the billing and collections activity of the business. The expressive and associational aspects of the process are obvious and cannot be cavalierly dismissed.

⁵⁰ Olympia Equipment, 797 F.2d at 375 (“So if a firm went to a monopolist and said, ‘Please -- for the sake of competition -- give me a loan so I can compete with you and make this a competitive market,’ and it was turned down, it could not invoke the Sherman Act.”). Compare CBT at 8 (requiring LECs to bill for unaffiliated CPP charges would “result in LECs subsidizing CMRS providers’ CPP offerings”); CPUC at 14 (LEC billing for CPP should not be mandated because such action “in essence, would constitute Commission intervention in the marketplace to regulate the costs of providing a particular competitive service”).

⁵¹ CERB repeatedly uses the phrase “the local bill” (CERB at 7-8) as though such bill existed independent of any business relationship between the LEC service provider and its customers. Thus, it makes the somewhat absurd remark that “As long as the LECs possess exclusive control over the local bill, they can use it to favor their own services and disadvantage competitors.” CERB at 7. Of course, the LEC does have exclusive control over the bill because it is the LEC’s bill. It was developed with LEC monies and incorporates the expectations of LECs’ customers, often discerned *via* LEC focus groups and LEC customer surveys.

⁵² Comments in the Truth-in-Billing proceeding make this point over and over.

Moreover, a carrier may provide billing services for another carrier(s) and then change its mind for legitimate business reasons.⁵³ For example, U S WEST has initiated six lawsuits for trademark slamming against companies for which it provides billing. Those companies continue to misrepresent to the public that they “are U S WEST,” using as their “support” for their misrepresentations the fact that they are included in U S WEST’s bill.⁵⁴ But, the risk from the billing association with others is obvious whether U S WEST encounters clearly “unlawful conduct” or not.

Given the increasingly competitive marketplace, it is predictable that carriers who bill for the charges of others will be giving second thoughts to the current and potential future arrangements. They will become increasingly vigilant with respect to the charges they agree to bill (if any), the length of time they lock themselves into such agreement, and the ability to cease the association when it is no longer commercially reasonable. Factors which will undoubtedly influence those decisions will be the time the carrier can expect to expend regarding the proposed billing (e.g., the number of customer inquiries reflecting confusion or customer

⁵³ See Olympia Equipment, 797 F.2d at 375 (noting that just because a business engages in business a certain way at one particular point in time (even where the business conduct is actively pro-competitive) does not compel a business to continue to behave that way); at 376 (“the law would be perverse if it made [a business entity’s] encouraging gestures the fulcrum of an antitrust violation. Then no firm would dare to attempt a graceful exit from a market in which it was a major seller.”), 378.

⁵⁴ U S WEST attached a transcript of a conversation between such a company and a customer in our comments in the Slamming proceeding. See Comments of U S WEST, Inc., CC Docket No. 94-129, filed Sep. 15, 1997 at Attachment.

complaints);⁵⁵ the amount of the billing; the legal, regulatory and legislative environment associated with such billing; and customers' changing expectations.

Clearly where a carrier is faced with billing a “new” charge -- such as CPP -- rather than one of some “tradition” (such as 1+ toll charges) -- and that billing can be predicted to cause customer irritation and confusion that will result in calls to the carrier, a carrier has the right to say “no thanks.” When those factors combine with a concern by the carrier with “bottom line” sticker shock,⁵⁶ increased legal interventions in third-party billing,⁵⁷ and customer expectations that “less may be better” with respect to a carrier’s billings,⁵⁸ there is no doubt that a federal regulatory mandate depriving a carrier of its ability to exercise its sound commercial judgment would be unlawful.⁵⁹ Thus, arguments such as those pressed

⁵⁵ SBC at 10 (nothing that LECs could end up having to handle “what could be a host of consumer complaints”).

⁵⁶ Id.

⁵⁷ Across U S WEST’s region, for example, legislation and regulatory initiatives have been instigated regarding LECs billing for the charges of others. A Federal Trade Commission (“FTC”) proceeding is also ongoing. See Federal Trade Commission Pay-Per-Call Rule Review, FTC File No. R611016.

⁵⁸ While there may not be a widespread customer revolt regarding third-party billing, having to institute and manage “do not bill”-types of programs are expensive and consume resources that carriers might wish to dedicate elsewhere, including to the offering and billing of their own services.

⁵⁹ As the BellSouth filing makes clear, over and above all the other reasons why mandating LEC billing for unaffiliated CPP offerings would be unlawful, the Commission cannot stretch its “ancillary jurisdiction” that far. BellSouth at 4-19.

The Commission should be aware that it is not just a “blanket” LEC-billing mandate that would present problems, but also one imposed *via* some type of “nondiscrimination” theory. Such mandate would itself have serious policy and legal implications, including constitutional ones. According to the entreaties of some commentators, such obligation would kick in if a LEC billed for its own wireless

by AirTouch that a carrier who concludes that its “ability to market additional products and services would be negatively impacted if [it] were to bill CPP”⁶⁰ is hardly acting anti-competitively. Rather, it is exercising precisely the kind of prudent commercial business judgment expected and demanded by its shareholders or owners. The Commission should not interfere with that judgment. If it does, it seems obvious that years of litigation are ahead, raising serious question about the possible success of an optional CPP offering in such an environment.

III. LECs SHOULD BE FREE OF OTHER BURDENS ASSOCIATED WITH CPP

Some commentators argue that LECs should be responsible for educating customers about CPP⁶¹ or providing blocking capabilities so that such calls cannot

services (the arguments not always even requiring a CPP-billing component) or for the services of others. See CPI at 9, CPUC at 15, Leap at 13; VoiceStream at 8 n.12 (all would appear to require a CPP billing aspect); Sprint at 9 (would require a CMRS component but not necessarily a CPP one). Compare Illuminet at 8 (suggesting that this governmental intrusion, in the case of CMRS CPP billings, would be less objectionable than a full-blown “all LECs must bill CPP charges” mandate).

It is not at all clear that it is lawful for governmental authorities to require carriers to bill for one type of service provider just because it bills for other types or to bill for others simply on the basis that it bills for its own services. (AirTouch at 19-20 and CERB at 9-10, arguing that because LECs bill for IXCs they should be required to bill for CMRS providers offering optional CPP services). “Punishing” a carrier for having made a prior decision to bill for some services and later chooses not to bill for others would actually stifle the objectives of the antitrust laws -- not advance them. See note 53, supra. Similarly, punishing a carrier for billing its own charges -- a Title II obligation -- by requiring that it bill for unaffiliated carriers can seriously impede that carrier’s rights of speech and association.

⁶⁰ AirTouch at 18, quoting from prior filing of SBC.

⁶¹ See Nextel at 2, 3-5 (the Commission should mandate a customer education program that includes wireline carriers. The expectation is that the more “industry” education that is done, the less information will need to be provided by the CMRS provider in the CPP notification. Id. at 7.). Compare Sprint who argues

be completed. Others simply argue that “blocking” should absolutely be a concomitant feature of any CPP offering, without really clearly analyzing who might be responsible for creating the capability.⁶²

As U S WEST stated in our opening comments, LECs should not have to underwrite the offering of CPP by engaging in mandated customer education⁶³ or changing the *status quo* of its network operations. A CMRS provider should either develop a blocking mechanism in its own network or avail itself of existing tools to assess whether or not an originating call is capable of “being CPP billed” -- some calls will clearly not be. Existing tools to support this CMRS endeavor clearly

that states should be foreclosed from requiring CMRS providers to engage in customer education but who “does not oppose permitting state to adopt non-intrusive educational requirements on operators of fixed services.” Sprint at 5-6.

⁶² See CPUC at 15-16; New York State Attorney General at 5-6; NTCA at 4 (referencing blocking but not assigning responsibility); Ohio Commission at 15 (addressing possible blocking at a LEC’s facility); OPASTCO at 3; Washington State DIS at 1-2. And see Ad Hoc/ACUTA asserting that CMRS providers should be responsible for blocking calls (thus providing some “protection” for PBX owners), the “solution” they actually describe appears to very much involve LECs in the overall blocking process. Ad Hoc/ACUTA at 20-21 (“the burden of identifying and blocking CPP calls [should be] upon the CMRS carrier” but the “originating LEC would be required to offer any requesting customer a blocking service that would screen for and block all CPP call attempts originated from the customer’s wireline service.”). And see Nortel, generally, arguing that most of the functionality to make CPP a success is found in the wireline networks and infrastructure, rather than that associated with the CMRS provider and that CPP might be deployed more cheaply by utilizing that infrastructure. While what Nortel says might be true, U S WEST would strenuously oppose such a regulatory position.

⁶³ See GTE at 23 (“LECs, which will not be offering CPP, and CMRS carriers that may or may not offer CPP service should not be required to foot the bill for a costly consumer education campaign that has no relationship to their own service offerings”). As GTE points out, the mailing of bill inserts can be expensive and the cost recovery mechanism from CPP offerors is less than clear. Id. and n.48.

include LIDB databases.⁶⁴ As Nortel has stated, use of LIDB would aid the CMRS provider in determining which calls to process as CPP calls, thereby avoiding as “unnecessary” any “new and unique CPP blocking capability” where the “bulk of the cost would [undoubtedly] fall on wireline carriers.”⁶⁵

LECs should not be expected to underwrite the offerings of other carriers. This is particularly true where the offering is not even expected to generate a ubiquitous market presence that could sustain even a rudimentary cost/benefit analysis. Thus, the Commission should make clear that all aspects of the CPP product offering, from customer education through customer or carrier control features, are the responsibility of the CMRS provider.

IV. CONCLUSION

For all the above reasons, U S WEST urges the Commission to refrain from significant regulatory intervention in the design and development of the CPP offering. In particular, the Commission should not saddle those carriers who choose not to offer CMRS CPP services or who are not CMRS providers in the first instance

⁶⁴ See Illuminet at 2-5 (LIDB can aid in both call processing and billing, thus minimizing unbillables); Nortel at 7-10. APCC (at 6-9) argues that Flex ANI is also such a tool, while Illuminet claims that Long-Term Number Portability (“LNP”) databases offer another such tool (at 4). U S WEST disagrees with both APCC and Illuminet with respect to these claims. Flex ANI is nowhere near as well suited as LIDB to perform the kind of line identification functions necessary to determine the propriety of CPP billing. And the LNP databases were not designed with such a line identification function in mind and would probably require a material economic investment to allow for such functionality, when such functionality already exists in LIDB. Thus, we urge the Commission not to hold that Flex ANI and LNP databases represent call management “tools” for CPP offerings.

with obligations to underwrite the CPP offering. No mandates regarding third-party billing should issue and no obligations to “block” CPP calls should be declared unless those mandates are confined to the CPP providers offering the optional service.

Finally, the Commission should take this opportunity to provide guidance on the matter of third-party billing. It should reject the entreaties of those who continue to argue for such billing, absent any sound legal or policy arguments to support their position. And, the Commission should affirmatively endorse the principles of free association and economic neutrality by rejecting claims that regulatory mandates for free riding are desirable in a competitive, deregulatory environment.

Respectfully submitted,

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⁶⁵ Nortel at 9. And see Pilgrim at 48 (arguing that a database similar to LIDB might operate as a blocking mechanism substitute. Why it believes the current LIDB could not adequately perform the task is not addressed.)

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused 1) the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a courtesy copy of the **REPLY COMMENTS** to be served, via hand delivery, upon the persons listed on the attached service list (those marked with an asterisk), and 3) a copy of the **REPLY COMMENTS** to be served, via first class United States mail, postage prepaid, upon all other persons listed on the attached service list.

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